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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44110
Plaintiff-Appellant,)	
)	Canyon County Case No.
v.)	CR-2015-10942
)	
JESSICA LYNN KING,)	
)	
Defendant-Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE D. DUFF McKEE
District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
ARGUMENT	1
The District Court Erred By Reversing The Magistrate’s Ruling On The Motion To Suppress Because The Facts Supported The Magistrate’s Conclusion That There Was Reasonable Suspicion To Believe King Was Driving Under The Influence And Because There Was Reasonable Suspicion That She Was Driving Inattentively	1
A. Introduction	1
B. The District Court Applied An Erroneous Legal Standard When It Required Suspicion Of An Illegality In Addition To DUI To Conduct A Traffic Stop	1
C. The District Court Also Erred When It Concluded That Sergeant Lathrop Lacked Reasonable Suspicion Of Inattentive Driving.....	4
CONCLUSION.....	6
CERTIFICATE OF MAILING	6

TABLE OF AUTHORITIES

CASES

PAGE

<u>Deen v. State</u> , 131 Idaho 435, 958 P.2d 592 (1998).....	4
<u>State v. Atkinson</u> , 128 Idaho 559, 916 P.2d 1284 (Ct. App. 1996).....	2
<u>State v. Dice</u> , 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994)	2
<u>State v. Emory</u> , 119 Idaho 661, 809 P.2d 522 (Ct. App. 1991)	2
<u>State v. Horton</u> , 150 Idaho 300, 246 P.3d 673 (Ct. App. 2010).....	2
<u>State v. Neal</u> , 159 Idaho 439, 362 P.3d 514 (2015)	1, 2
<u>State v. Rader</u> , 135 Idaho 273, 16 P.3d 949 (Ct. App. 2000).....	3
<u>State v. Roe</u> , 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004)	2
<u>State v. Schaffer</u> , 133 Idaho 126, 982 P.2d 961 (Ct. App. 1999)	5
<u>United States v. Arvizu</u> , 534 U.S. 266 (2002).....	3
<u>United States v. Cortez</u> , 449 U.S. 411 (1981)	2

STATUTES

I.C. § 49-101(3)	4
------------------------	---

OTHER AUTHORITIES

I.C.J.I. 1031	4
---------------------	---

ARGUMENT

The District Court Erred By Reversing The Magistrate's Ruling On The Motion To Suppress Because The Facts Supported The Magistrate's Conclusion That There Was Reasonable Suspicion To Believe King Was Driving Under The Influence And Because There Was Reasonable Suspicion That She Was Driving Inattentively

A. Introduction

The magistrate applied the totality of the circumstances test and concluded that King's driving pattern of passing through "at least two" intersections with her turn signal on without turning provided reasonable suspicion that she was driving under the influence. (Tr., p. 20, L. 20 – p. 22, L. 7.) The district court reversed, holding that "driving patterns that are merely unusual or irregular but not illegal do not justify a suspicion to support a traffic stop" for DUI and that driving through multiple intersections with a turn signal on did not constitute reasonable suspicion of inattentive driving. (R., pp. 76-81.) The district court erred because application of the correct legal standards to the facts supports reasonable suspicion of both DUI and inattentive driving. (Appellant's brief, pp. 4-11.)

B. The District Court Applied An Erroneous Legal Standard When It Required Suspicion Of An Illegality In Addition To DUI To Conduct A Traffic Stop

Traffic stops "are permissible when justified by an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime." State v. Neal, 159 Idaho 439, 442, 362 P.3d 514, 517 (2015). "Thus there are two possible justifications for a traffic stop—the officer has reasonable suspicion that a driver has committed an offense, such as a traffic offense, or the

officer has reasonable suspicion of other criminal activity, such as driving under the influence.” Id.

Reasonable suspicion of DUI is present if the officer “was in possession of facts giving rise to a reasonable and articulable suspicion that the vehicle’s driver was intoxicated.” State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). “In determining whether a reasonable suspicion existed at the time of the stop, the proper inquiry is to look at the totality of the circumstances and ask whether the facts available to the officers at the time of the stop gave rise to a reasonable suspicion, not probable cause to believe, that criminal activity may be afoot.” State v. Dice, 126 Idaho 595, 599, 887 P.2d 1102, 1106 (Ct. App. 1994) (internal quotes and citations omitted). “Reasonable suspicion requires less than probable cause but more than speculation or instinct on the part of the officer.” State v. Horton, 150 Idaho 300, 302, 246 P.3d 673, 675 (Ct. App. 2010) (citation omitted). Moreover, an officer may rely on his training and experiences to draw inferences that might elude an untrained person. United States v. Cortez, 449 U.S. 411, 418 (1981); State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004). The inference that King may be under the influence of alcohol, drawn by Sergeant Lathrop with his training and 16 years of experience from the circumstances underlying this traffic stop, including the time and King’s driving pattern, was reasonable.

On appeal King claims Sergeant Lathrop lacked reasonable suspicion of DUI because her driving “can be described as normal driving behavior.” (Appellant’s brief, pp. 5-7 (citing State v. Emory, 119 Idaho 661, 664, 809 P.2d

522, 525 (Ct. App. 1991)).¹ The flaw in this argument is that King's driving behavior cannot be *accurately* described as normal, much less so normal that an officer with Sergeant Lathrop's experience could not, under the totality of the circumstances, reasonably suspect she may have been driving under the influence. At a minimum King was confused, distracted or inattentive, and suspicion that alcohol may have been the reason for any of those things was reasonable. King's contention that there might be an innocent explanation for her driving (Appellant's brief, p. 9 (driving through multiple intersections with the turn signal activated "can just as easily be explained as the driver not knowing which street to turn onto") neither renders her driving "normal" nor negates reasonable suspicion. United States v. Arvizu, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct."); State v. Rader, 135 Idaho 273, 276, 16 P.3d 949, 952 (Ct. App. 2000) ("the existence of alternative innocent explanations of the circumstances does not negate the fact that the officer had a reasonable suspicion that a crime might have been committed").

The district court's holding that "driving patterns that are merely unusual or irregular but not illegal do not justify a suspicion to support a traffic stop" applied an erroneous legal standard. (R., p. 76.) King's claim that signaling a turn three

¹ King argues that the "normal driving behavior" standard was applied by the district court. (Appellant's brief, pp. 7-9.) The district court specifically held that "driving patterns that are merely unusual or irregular *but not illegal* do not justify a suspicion to support a traffic stop." (R., p. 76 (emphasis added).) King's contention that the district court did not require an illegal driving pattern is contrary to the plain language employed by the district court.

or more blocks in advance is a “normal driving behavior” (Appellant’s brief, pp. 5-12) is meritless. The magistrate applied the correct legal standard and reached the correct result that the totality of the circumstances gave rise to suspicion that King may have been driving under the influence at the time of the traffic stop. The district court therefore erred in reversing.

C. The District Court Also Erred When It Concluded That Sergeant Lathrop Lacked Reasonable Suspicion Of Inattentive Driving

Sergeant Lathrop had reasonable suspicion that King was driving inattentively when she drove through at least two intersections with her turn signal on but without turning. (Appellant’s brief, pp. 8-11 (citing I.C. § 49-101(3); I.C.J.I. 1031; Deen v. State, 131 Idaho 435, 435, 958 P.2d 592, 592 (1998)). The district court erred in holding otherwise.

On appeal King argues that an officer does not have reasonable suspicion of inattentive driving, apparently as a matter of law, until he observes a motorist go through *three* intersections with an active turn signal but not turning. (Appellant’s brief, pp. 15-16.) In this case Sergeant Lathrop testified he saw King drive through three intersections. (Tr., p. 6, Ls. 11-21.) The magistrate found she had driven through “at least two” intersections (Tr., p. 20, L. 20 – p. 21, L. 19), which does not exclude three. Even if King were correct, and there is a bright line rule requiring three intersections, the magistrate’s factual findings do not exclude three intersections so, at best, King would be entitled to a remand to resolve an outstanding factual question. King’s argument does not show the district court correctly reversed the order denying suppression.

King next argues that seeing her eventually turn dissipated reasonable suspicion because it shows she *meant* to signal her turn more than two blocks ahead, rather than being inattentive. (Appellant's brief, pp. 16-17 (evidence she turned "shows that the signal was simply early in time").) This argument fails, first because King again makes the erroneous argument that an innocent explanation of the evidence necessarily negates reasonable suspicion and, second, because *intentionally* driving multiple blocks with a blinking turn signal is not even a truly innocent explanation. That she eventually made a turn did not dissipate the officer's reasonable suspicion that she drove inattentively prior to making the turn.² The district court erroneously concluded Sergeant Lathrop lacked reasonable suspicion that King was driving inattentively.

² King also argues that the stop violated her rights under the Idaho Constitution. (Appellant's brief, pp. 17-18.) King did not claim in the magistrate division that the Idaho Constitution granted greater rights against search and seizure than the Fourth Amendment. (R., pp. 17-22; Tr., p. 15, L. 17 – p. 18, L. 10.) Even if this argument were preserved, King has presented no reason why reasonable suspicion of DUI or inattentive driving would be inadequate to justify a traffic stop under the Idaho Constitution. State v. Schaffer, 133 Idaho 126, 130, 982 P.2d 961, 965 (Ct. App. 1999) (Court will not interpret state constitution differently from corresponding provisions of federal constitution unless given a "cogent reason").

CONCLUSION

The state respectfully requests this Court to reverse the district court and reinstate the judgment of the magistrate.

DATED this 17th day of November, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 17th day of November, 2016, served two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT by placing the copies in the United States mail, postage prepaid, addressed to:

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